

State of Montana

REPORT TO THE LEGISLATURE

Sunset Review

BOARD OF MASSAGE THERAPISTS

The 1977 Sunset Law terminates the Board on July 1, 1981. This review provides information to assist the Legislature in making the decision to terminate, modify or continue the Board.

This report presents nine areas for Legislative consideration (page 13) including:

- ▶ The practice of colonics is not addressed in Montana law, and its practice may go beyond the definition of massage therapy.
- ▶ The board has never made an inspection of a licensee's premises.
- ▶ Board records indicate instances of inconsistent and statutorily incorrect action.
- ▶ Licensing boards should be allowed to meet as often as necessary to protect the public.

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January 1980

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The Legislative Audit Committee
of the Montana State Legislature:

Herein transmitted is our sunset performance review of the Montana Board of Massage Therapists. The review was conducted in response to the 1977 Sunset Law, which terminates the board on July 1, 1981.

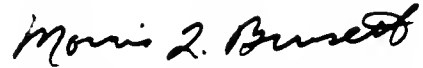
The review focused upon an examination of board operations. It does not encompass an audit of the board's financial transactions or overall compliance with state laws.

There are no formal recommendations in the report since the responsibility for such recommendations lies with the Audit Committee. Nevertheless, we discussed the contents of the report with a number of individuals and organizations, including the director of the Department of Professional and Occupational Licensing, the members of the Board of Massage Therapists, the

Governor's Office of Budget and Program Planning, and the American Massage and Therapy Association.

We wish to express our appreciation to the members of the board and to the director of the department and his staff for the assistance they provided during the review.

Respectfully submitted,

A handwritten signature in black ink, reading "Morris L. Brusett". The signature is written in a cursive, slightly slanted style.

Morris L. Brusett, C.P.A.
Legislative Auditor

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APPOINTIVE AND ADMINISTRATIVE OFFICIALS

BOARD OF MASSAGE THERAPISTS

		<u>Term Expires</u>
Tom Prewett President	Glasgow	1982
Ruth Robertson Secretary-Treasurer	Stanford	1981
Ethel Gullickson	Winnett	1980

DEPARTMENT OF PROFESSIONAL AND
OCCUPATIONAL LICENSING

Ed Carney	Director
Joan Haubein	Administrative Assistant

Chapter I

BACKGROUND

This sunset performance review addresses state regulation of the occupation of massage therapy by the Board of Massage Therapists--a state regulatory board within the Department of Professional and Occupational Licensing.

REPORT OBJECTIVES

The 1977 Legislature passed a law terminating numerous regulatory boards and agencies, including the Board of Massage Therapists. This law, commonly referred to as the "sunset law," requires the Legislative Audit Committee to conduct a performance review of each terminated agency. The performance review must determine the need for each regulatory board/agency and the Audit Committee must offer recommendations for reestablishment, modification, or termination of the agency in question.

The sunset law also requires an examination of the following questions during the conduct of the committee's review:

- (a) Would the absence of regulation significantly harm or endanger the public's health, safety, or welfare?
- (b) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public's health, safety, or welfare?
- (c) Is there another less restrictive method of regulation available which could adequately protect the public?

- (d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?
- (e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?
- (f) Are all facets of the regulatory process designed solely for the purpose of, and have as their primary effect, the protection of the public?

Using the information contained in this report, and that gathered during a public hearing, the committee will address these six questions. During the hearing process, testimony and comments will be heard from the board/agency, the profession, and interested members of the public.

In defining legislative intent, the sunset law states that, by requiring periodic evaluation in the form of a performance review, the legislature will be in a better position to ensure that agencies and programs exist only to be responsive to state residents' needs. The sunset law terminates the board on July 1, 1981.

THE OCCUPATION OF MASSAGE THERAPY

Massage therapy is the trained ability of body massage applied to a patron by an operator's hands. The operator (masseur) uses oil rubs, salt glows, hot and cold packs, baths, and variations of touching, stroking, friction, kneading, vibration, percussion,

and gymnastics for the purpose of affecting the nervous and muscular systems and the general circulation.

Massage therapy is usually practiced by massage therapists within their own homes; however, a few therapists are employed in health and athletic clubs. In 1978, there were 88 massage therapists licensed to practice in Montana.

Chapter II

BOARD OF MASSAGE THERAPISTS

INTRODUCTION

The State Board of Massage Therapists was established by law in 1967 to regulate massage therapy. The purpose of the licensing law was to establish minimum qualifications and penalties for unprofessional and immoral conduct. The board performs several statutory functions. These functions are to:

1. Determine applicant qualifications, interview, and give examinations to those who qualify.
2. Issue licenses to those who pass the examinations.
3. Annually renew licenses and collect license fees.
4. Oversee the practice of massage therapy throughout the state and evaluate complaints against licensees.
5. Hold hearings when necessary and suspend, revoke, or refuse to renew licenses when justified.

BOARD OPERATIONS

Structure

The board is composed of three massage therapists appointed by the Governor for three-year terms. The three members must: 1) be residents of Montana, 2) have been masseurs continuously in this state for at least one year, and 3) have integrity and ability as masseurs.

The board is required by law to hold at least one regular meeting each year and may not meet more than four times each year. There are usually two meetings per year; one in the spring and one in the fall. Board meetings are used to administer examinations, and to consider complaints and other items the board deems necessary. While attending board meetings, board members receive \$25 per day compensation plus travel expenses ordinarily provided by the state.

Staffing and Funding

The board is attached to the Department of Professional and Occupational Licensing for administrative purposes. The department provides administrative support to the board in the form of secretarial, legal, budgeting, and accounting services. The board is autonomous in decision-making functions with respect to policymaking, licensing, and disciplinary procedures. A part-time position (.12 FTE) is provided by the department to administer the board's activities.

The board is financed from an account in the earmarked revenue fund. All money for board operations comes from examination and license fees paid by massage therapists. The current fees charged by the board are shown in Illustration 1.

FEE SCHEDULE

Application and examination	\$35
Reexamination	10
Renewal for in-state	25*
Initial license out-of-state	35
Penalty for late payment	10

*Board can set fee to a maximum of \$50.

Source: Compiled by the Office of the Legislative Auditor.

Illustration 1

The following illustration depicts the financial history of the board from fiscal year 1972-73 through fiscal year 1978-79. Fund balances are as of June 30 of each year.

BOARD FINANCIAL HISTORY

<u>Year</u>	<u>Revenue</u>	<u>Expenditures*</u>	<u>Fund Balance</u>
1978-79	\$2,060	\$1,677	\$4,100
1977-78	2,260	1,795	3,717
1976-77	2,413	1,584	3,252
1975-76	2,610	2,610	2,423
1974-75	2,370	2,890	2,423
1973-74	2,428	2,300	2,943
1972-73	1,565	2,114	2,815

*Includes prior year expenditures, adjustments, and accruals.

Source: Compiled by the Office of the Legislative Auditor.

Illustration 2

BOARD GOALS AND OBJECTIVES

The sunset law requires each board/agency under review to define its goals and objectives. The stated goal of the Board of Massage Therapists is:

To protect the interests, health, and welfare of the public by assuring that standards of education, training, examination, and practice are met by all licensees.

Based on the preceding goal, the board listed the following objective:

To be responsible for administering examinations, approving applications, issuing licenses, and renewing licenses for massage.

BOARD FUNCTIONS

Licensing

The primary function of the board is to license those individuals engaged in the occupation of massage therapy. All in-state applicants must meet the following requirements to be licensed:

- Have a diploma or credentials issued by an approved school of massage therapy certifying not less than 1,000 hours of study satisfactory to the school.
- Satisfactorily pass a written examination and a reasonable demonstrative and oral examination given by the board. (The board meets twice during the year in Helena to administer the examinations.)

Persons previously licensed to practice massage therapy in states with requirements similar to those of Montana may be licensed without examination at the discretion of the board. The following tables show the number of applicants taking and passing the examination for fiscal years 1972-73 through 1978-79 and the number of new and renewed licenses for calendar years 1973

through 1978. Based upon the number of individuals examined and subsequently licensed, at least 80% of the presently practicing massage therapists received their licenses through the "grandfather" clause. By law, they were not required to take or pass an examination. However, the board administered an examination to all individuals under the clause.

NUMBER OF APPLICANTS
TAKING AND PASSING THE EXAMINATION

<u>Fiscal Year</u>	<u>Taken</u>	<u>Passed</u>
1978-79	1	1
1977-78	3	2
1976-77	2	2
1975-76	2	2
1974-75	1	1
1973-74	3	3
1972-73	0	0

Source: Compiled by the Office of the Legislative Auditor from board records.

Illustration 3

LICENSEES 1973-78

<u>Calandar Year</u>	<u>New</u>	<u>Renewed</u>
1978	3	85
1977	2	92
1976	2	101
1975	2	98
1974	5	104
1973	0	102

Source: Compiled by the Office of the Legislative Auditor from board records.

Illustration 4

Complaints

The complaint process for the board is similar to that of other regulatory boards within the department. A board complaint form must be filled out and signed before the board will process it. The complaint form is then reviewed by the board. Depending upon the type of complaint, an investigator may be assigned. If an investigator is assigned, an investigation report is submitted to the board for appropriate action.

Complaints are often resolved over the telephone or through correspondence. All complaints are logged on a complaint register which lists names, dates, and actions taken.

We reviewed complaints for fiscal years 1972-73 through 1978-79. The following illustration lists the number of complaints received per year.

BOARD COMPLAINTS

<u>Fiscal Year</u>	<u>Complaints</u>
1978-79	3
1977-78	0
1976-77	0
1975-76	2
1974-75	1
1973-74	1
1972-73	0

Source: Compiled by the Office of the Legislative Auditor from board records.

Illustration 5

Since fiscal year 1972-73, seven complaints have been processed by the board. Four complaints were

against unlicensed individuals who were engaging in massage and were unaware of the license requirements. The board resolved these through simple notification to the appropriate parties. Two complaints were against unlicensed individuals operating "massage parlors." In each case, county attorneys closed the establishments through permanent injunctions. The seventh complaint did not involve a violation of the massage law. It was resolved by changing the advertising in the yellow pages of the telephone directory from "massage parlors" to "Licensed Massage Therapists."

EXEMPTIONS TO REGULATION

The law states that a person who practices massage therapy without a license is guilty of a misdemeanor and upon conviction is subject to a fine or imprisonment or both. The exemption to the licensing requirement is that persons authorized by the laws of Montana to practice medicine, surgery, osteopathy, chiropractic, podiatry, registered nursing, practical nursing, physical therapy, barbering, or cosmetology shall not be required to be licensed as massage therapists so long as any massage therapy given by them is given incidental to the professional service which their respective license authorized them to perform.

Chapter III

OTHER REGULATION

There is no regulation of the occupation of massage therapy by other agencies in state government or by the federal government. Self-regulation by the profession is limited. Professional organizations, such as the American Massage and Therapy Association and the International Myomassethics Federation, provide input into state licensing laws and help establish standards of conduct for massage therapists. An example is the 1,000 hour educational requirement which is necessary for school accreditation by the American Massage and Therapy Association. Only those schools accredited by the association are recognized by the Montana board.

The occupation of massage therapy is regulated by boards or departments in 12 states throughout the United States. The following chart lists the states, the regulating entity, and the number and type of board members required by statute.

STATES REGULATING MASSAGE THERAPY

<u>State</u>	<u>Regulating Entity</u>	<u>Number of Members/Type</u>
Montana	Board	3/occupation
Arkansas	Board	3/occupation
Florida	Board	5/occupation
Hawaii	Board	3/occupation
Nebraska	Board	3/occupation
New Mexico	Board	3/occupation
New York	Board	7/4-occupation 3-physician
North Dakota	Board	3/occupation
Ohio	State Medical Board	10/7-physician 2-other 1-public
Oregon	Board	3/occupation
South Dakota	Board	3/2-occupation 1-public
Washington	Board	3/occupation

Source: Compiled by the Office of the Legislative Auditor.

Illustration 6

Chapter IV

AREAS FOR LEGISLATIVE CONSIDERATION

The design and effectiveness of certain aspects of the regulatory process may warrant legislative consideration. The intent of the following sections is to briefly discuss these aspects as they apply to the Board of Massage Therapists. The areas of consideration include:

1. Colonic Irrigation.
2. Inspections.
3. Board Membership.
4. Reporting Requirements for the Board.
5. Limitation on Meetings.
6. Board Discretion.
7. Automated License Records.
8. Multi-year Renewal.
9. Other Areas of Consideration.

COLONIC IRRIGATION

Colonic irrigation is a treatment accomplished through the use of a machine which administers varying temperatures of water and water pressure, and in effect gives a pressurized enema. At the present time, colonic irrigation is not widely practiced by massage therapists in Montana. Only one licensed massage therapist is known to be engaging in this activity within the state.

In a 1963 court case involving a machine used for colonic irrigation, the U.S. Food and Drug Administration stated that the treatment ignored proven medical facts that point to the dangers of irrigating the colon. These dangers included the spreading of infections, possible perforation of the colon walls, and the rinsing out of badly needed salts and other materials required for the colon's proper function.

In August 1979 a Montana physician was consulted whose specialty is Gastroenterology. He corroborated the FDA finding. He stated that it is definitely a dangerous practice. A person with a non-specific carcinoma or diverticulitis could be harmed by this practice. Colonic irrigation could in fact make a previously treatable disease or infection, non-treatable.

Other states specifically restrict massage to the superficial or exterior parts of the body and this effectively removes the practice of colonic irrigation from massage therapy.

The practice of colonics is not addressed in Montana law, and its practice may go beyond the definition of massage therapy as stated in section 37-33-102, MCA. Because of the possible dangers associated with colonic irrigation, this practice should be questioned as being a part of the occupation of massage therapy.

INSPECTIONS

The written goal of the board is "To protect the interests, health and welfare of the public by assuring that standards of education, training, examination, and practice are met by all licensees."

The administrative rules of the board state:

"Inspections may be conducted by the Board, of all licensee's office space, in order to maintain standards of practice and sanitation and to properly protect the health, welfare and safety of the public."

An additional rule gives the board authority to set and approve requirements and standards for the sanitation of a licensee's premises. Although there are presently 88 licensed massage therapists in Montana, the board has never made an inspection of a licensee's premises. Additionally, the board has no specific criteria for determining whether an establishment meets a standard of practice or sanitation.

BOARD MEMBERSHIP

In order to facilitate public input into board operations, some states have required that regulatory boards have public members. Illustration 6, page 12, indicates that two states require a public member on the board. Montana's board does not have a public member. Any appointment of public members should be balanced against factors such as the size of the board and the number of other occupations represented.

Gubernatorial appointments to the board are not subject to Senate confirmation. The Senate confirms the appointments to some of the state's boards and commissions. In addition, during the 1977-79 biennium of sunset, the Legislative Audit Committee recommended that appointments to regulatory boards be subject to Senate confirmation.

BOARD'S REPORTING REQUIREMENTS

Regulatory boards are often criticized as agencies which are not accountable. A report containing specific information would allow the legislature to more closely monitor the board's activity.

Montana currently has a reporting requirement, section 2-7-102, MCA, which requires all state governmental agencies to submit biennial reports to the Governor. These reports, when published, contain very limited information. The Governor's Report for 1978 for Department of Professional and Occupational Licensing boards only gives each board's disbursements, program description, and recommendations for improvements.

To increase the usefulness of the biennial report, the following information could be included: the number of examinations held, the number of applicants in each licensure group, the pass-fail rate in each group, board receipts and expenditures, and other information which the legislature may deem appropriate.

LIMITATION ON MEETINGS

The board is statutorily restricted by 37-33-201, MCA, from meeting more than four times each year. If the board exists for the protection of the public, a meeting restriction might unnecessarily prevent the board from accomplishing essential actions such as acting on applications for licensure and handling complaints. Other professional and occupational licensing boards are allowed to meet as often as necessary to protect the public health and safety.

BOARD DISCRETION

A review of board meeting minutes indicates instances of inconsistent and statutorily incorrect action.

--In one instance, the board did not allow a licensed massage therapist to become an instructor because the individual did not have five years of practical experience.

There are no Montana laws or rules concerned with the experience or qualifications of massage therapy instructors. In not allowing the individual to instruct massage therapy, the board went beyond its established regulatory authority.

--In another instance, the board allowed an individual to be licensed with less than the required 1,000 hours of education. The board subsequently denied licensing another individual who had less than 1,000 hours, but had graduated from a school of massage therapy.

The board may not be uniformly administering the laws and rules which regulate the occupation of massage

therapy. The board should review its authority and practice to insure its decisions are consistent and within its statutory charge.

AUTOMATED LICENSE RECORDS

Records on licensees are kept manually. In addition, each new or renewed license must be manually typed by the administrative assistant. An alternative is to automate the licensee records. The automated system could print the renewal notices and also the licenses. Further, such automated records could be used to generate statistical reports on the licensee population. Additions, deletions, and corrections to the licensee files could be made easily.

An automated system may not appear economical for a board with so few licensees (88); if such a system were only for that board. But, if a department-wide system were developed, the board's licensee records could be added at very little additional cost. Also, over a period of several years, the time spent processing license records for even a small number of licensees becomes significant and the time savings using an automated system would become even more beneficial.

MULTI-YEAR RENEWAL

Currently, statute requires annual renewal by massage therapists. Annual renewal may not be necessary and may result in administrative costs in excess of those necessary for effective regulation. Even

though the administrative assistant for the board spends 12 percent of available time on the Board of Massage Therapists (the remaining time being spent on other boards), a relatively significant amount of this time is used in notifying licensees that their licenses are due for renewal and then processing those renewals. One alternative to this expenditure of time is to spread the renewals over two or more years. If license renewals are extended for more than one year, this will reduce the workload for the department. Multi-year licensing would create savings in administrative expenses. The amount saved would depend upon the number of licensees renewing each year. In order to maintain a level of income consistent with administrative expenses, the renewal fee as established may have to be increased from the current annual renewal fee. Due to a potential reduction in costs, the renewal fee for a biennial renewal, for example, would not necessarily have to be double the current fee.

OTHER AREAS OF CONSIDERATION

In previous reviews of regulatory boards in Montana, the aspects of setting licensing fees commensurate with the cost of regulation, and maintaining uniformity among boards in reimbursement of board members were discussed. These issues were not addressed in this review since the fund balance for the board does not appear excessive at the present time,

and reimbursement for board members is similar to that for other regulatory boards.

